
(2013) 01 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 5462 of 2012

Sudhakar Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1

Citation : (2013) 4 ALLMR 716 : (2013) 3 MhLj 806

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.M. Mane, for the Appellant; S.D. Kaldate, AGP, for the Respondent

Judgement

S.S. Shinde, J.—Rule, returnable forthwith. By consent of the parties, taken up for final hearing. This writ petition takes exception to the judgment and order dated 5th May, 2012 passed by the Minister, Food and Civil Supplies and Consumer Protection in case No. VAM1009/F.N.530/C.S.21.

2. It is the case of the petitioner that he was running a fair price shop and retail kerosene in Yemgarwadi since 1987. The retail kerosene licence of the petitioner was renewed by the respondent authorities from time to time till 1997. It is the case of the petitioner that though the petitioner paid renewal fees, his retail kerosene licence No. 13/87 has not been renewed after 1997 but, the petitioner was given kerosene quota for distribution till December.

3. The respondent authority directed the petitioner to deposit Rs. 3,000/- towards deposit for retail kerosene security deposit vide Challan No. 101915161. The petitioner deposited Rs. 3000/- in the treasury office Tuljapur on 27th November, 2002.

4. It is the case of the petitioner that as the respondents authorities have not renewed the licence of the petitioner after 1997 in spite of the fact that the licenses of similarly situated licence holders were renewed by the authorities. It is the case of the petitioner that the Government has taken policy decision on

2nd February, 2002 to renew licenses of retailers by imposing one rupee per delay charges. The petitioner was directed by the authorities to deposit Rs. 2190/- by 23rd December, 2004 towards delay charges in the treasury alongwith Rs. 250/- renewal charges. It is further case of the petitioner that on 21st June, 2005, the respondents authorities after accepting the charges for renewal of retail kerosene licenses from the petitioner and other licence holders, forwarded the list alongwith recommendation to the respondent No. 1 for further direction vide letter dated 21st June, 2005.

5. It is the case of the petitioner that the respondent authority has issued show cause notice dated 11th September, 2006 to the petitioner instead of issuing renewal order. The petitioner submitted his reply to the said show cause notice on 29th September, 2006. It is the case of the petitioner that the petitioner did not receive any order of renewal for fairly long time and mean while the respondent no. 2 has issued show cause notice. The petitioner preferred revision petition before the respondents No. 1 on the ground that the petitioner's licence is not renewed. However, the licence of other similarly situated persons came to be renewed. The petitioner and some other similarly situated licence holders received notice of hearing at Mantralaya on 21st July, 2009. The petitioner had been to Mantralaya for personal hearing. The matter was heard by the Minister; but, the Minister did not pass an order on the file of the petitioner and passed order in respect of others on 29th August, 2009. It is specific case of the petitioner that in fact, the facts of the petitioner's case and one Shri Kishan Shivram Patil are identical.

6. On 31st March, 2010, the petitioner had been to Mantralaya for inquiry in respect of decision in his matter, but, he came to know that his file is not traceable and he was asked to file fresh revision petition.

On 15th April, 2010, the petitioner was called for personal hearing on 21st May, 2010 at Mantralaya. Hearing was concluded. However, no decision was pronounced on the same day. It is case of the petitioner that even after one year, no decision was communicated to the petitioner. Therefore, he went to Mantralaya and again the concerned clerk replied that file of the petitioner is not traceable and he should file another set of appeal of revision. Therefore, again on 15th April, 2010, the petitioner submitted another set of appeal. It is case of the petitioner that the petitioner was waiting for notice of hearing but, surprisingly, the petitioner has received decision dated 5th May, 2012 rejecting his revision in which, hearing was conducted in the year, 2010. Hence, this petition.

7. The learned Counsel for the petitioner submits that the case of other similarly situated licence holders for renewal has been favourably considered by the Minister. However, in case of the petitioner, the licence is not renewed. Learned Counsel for petitioner, in support of aforesaid contentions, invited my attention to the decision of the Minister, Food, Civil Supplies and Consumer Protection dated 29th August, 2009 in case of Shri Kishan Shivram Patil whereby the Minister partly allowed the revision and the authorities were directed to renew the licence

of Kishan Shivram Patil by asking him to deposit late fees and complete other formalities. Therefore, according to the learned Counsel for petitioner, the Minister should not have discriminated between two similarly situated licence holders for renewal of the said licence. It is further submitted that the revisional authority ought to have taken a decision within reasonable period. However, the matter was heard in 2010 and the Minister has passed order on 5th May, 2012 and, therefore, there is a possibility that revisional authority has not applied his mind properly to the facts of the case of the petitioner. It is submitted that the casual approach of the office of the respondent No. 1 in misplacing the file of the petitioner and further asking the petitioner to submit copy of revision twice, is indicative of the fact that the decision taken by the Minister is without application of mind to the facts of the case. Therefore, learned Counsel for petitioner would submit that this petition may be allowed.

8. On the other hand, learned AGP, relying upon the reasons recorded by the respondent No. 1, submits that renewal of the licence cannot be after a gap of more than five years and, therefore, the Minister has rightly rejected the prayer of the petitioner.

9. I have given due consideration to the rival submissions of the parties and with the assistance of the learned Counsel for the petitioner, perused compilation of the writ petition and in particular, decision of the Minister in case of Kishan Shivram Patil where the revision of the said Kishan Shivram was partly allowed thereby giving directions to the authorities to renew licence by accepting late fees from Kishan Shivram Patil. The contention of the petitioner that he is similarly situated licence holder like Kishan Patil has not been specifically denied by the respondents/authorities. Therefore, prima facie, it appears to this Court that the decision rendered by the Minister in case of the petitioner is without considering the contention of the petitioner that case of one similarly situated licence holder Kishan Shivram Patil is favourably considered. Therefore, the decision impugned in this petition deserves to be interfered with.

Secondly, there is no denial of the fact that the revision of the petitioner was heard by the respondents No. 1 Minister in the year, 2010 and the decision was pronounced in the month of May, 2012. The provisions of Order 20, Rule 1 of the CPC reads, thus:

ORDER XX

JUDGMENT AND DECREE

1. Judgment when pronounced

[(1)] The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

It follows from the provisions of Rule 1, Order 20 of C.P.C., reproduced above, that the court after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders. Further, proviso to the said Rule also mandates that if the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

10. The respondent NO. 1 Minister is empowered to hear the revision While the Minister hears the revision, it has the trapping of the Court where procedure of giving notice, hearing to the parties is contemplated. Therefore, the aforesaid provisions of the CPC are required to be adhered to by the revisional authority. In that view of the matter, in my opinion, ends of justice would meet if the impugned decision of the respondent No. 1 is quashed and set aside and revision/file NO. VAM1009/F.N.530/C.S.21 is restored to its original file for consideration afresh. Accordingly, following order is passed:

- (i) The impugned judgment and order 5th May, 2012 passed by the Minister, Food and Civil Supplies and Consumer Protection in case NO. VAM1009/F.N.530/C.S.21, is quashed and set aside and the revision is restored to its original file;
- (ii) The Minister to hear the said revision afresh, after giving notice to the parties and further opportunity of filing pleadings and documents, if any;
- (iii) The Minister concerned shall, after conclusion of hearing, either pronounce the judgment and order forthwith or adhere to the provisions of Order XX, Rule 1 of the Code of Civil Procedure;
- (iv) Since the petitioner is pursuing for renewal of licence for years together, it is desirable that the Minister shall decide; the case of the petitioner, as expeditiously as possible, preferably within six months from receipt of the order of this Court;

(v) It is made clear that this Court has not expressed any opinion on the merits of the matter and it is left open to the revisional authority to take a decision, in accordance with the policy, Rules and on the subject matter;

(vi) Rule is made absolute in the above terms. Petition stands disposed of.